

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

LAURICE MCCURDY,

Plaintiff,

vs.

Officer Lisa Alvarez, et al.,

Defendants.

2:08-CV-01742-PMP-PAL

ORDER

On March 4, 2011, this Court entered an Order (Doc. #115) granting Defendant's Motion for Summary Judgment (Doc. #104). The Court's Order (Doc. #115) was predicated in part upon the failure of Plaintiff McCurdy to file a timely response in opposition to Defendants' motion for summary judgment. However, it appears that on the same date, March 4, 2011, Plaintiff McCurdy in fact filed an Response in Opposition to Defendants' Motion for Summary Judgment (Doc. #114). As a result, the Court finds it appropriate to grant Plaintiff McCurdy's Motion for District Judge to Reconsider (Doc. #118) filed March 23, 2011, and to consider Defendants' Motion for Summary Judgment solely on its merits.

Specifically, the Court finds that Defendants are entitled to judgment as a matter of law because Plaintiff McCurdy has failed to demonstrate the existence of a genuine issue of material fact regarding the claims set forth in his complaint. The

1 record does not support Plaintiff's claim that Defendants' used excessive force, but
2 instead shows that they used reasonable force necessary to restrain Plaintiff while
3 advancing legitimate penological interests to insure the order, safety and security of
4 the jail and its occupants. Neither does the record support Plaintiff McCurdy's
5 contention that any Defendant filed a false incident report.

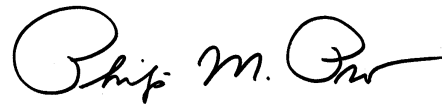
6 Moreover, Defendants are entitled to qualified immunity because their
7 conduct did not violate clearly established statutory or constitutional rights of which
8 a reasonable person would have known. Pearson v. Callahan 555 U.S. 223(2009).
9 In addition, Defendants are entitled to discretionary immunity pursuant to N.R.S.
10 41.032.

11 **IT IS THEREFORE ORDERED that** Plaintiff's Motion for
12 Reconsideration (Doc. #118) is **GRANTED** to the foregoing extent.

13 **IT IS FURTHER ORDERED that** Defendants' Motion for Summary
14 Judgment (Doc. #104) is **GRANTED** on its merits and judgment is hereby entered
15 in favor of Defendants and against Plaintiff.

16 **IT IS FURTHER ORDERED that** Plaintiff's Motion for District Judge
17 to Reconsider the Order Denying Motion for Recusal (Doc. #119) is **DENIED**.

18
19 DATED: March 28, 2011.

20
21 

22

PHILIP M. PRO
23 United States District Judge
24
25
26